IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/04/2004

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 34278 of 2003
and
W.P.M.P. No. 41566 of 2003
W.V.M.P. No. 88 of 2004

K. Kandasamy
(PFM No. 31464)
Assistant Manager
(Scale-JM-I)
UCO Bank, Korattur Branch
Korattur, Chennai ... Petitioner

-Vs-

1. The Chairman and Managing Director
UCO Bank, Head Office
Personnel Department
12, Old Court House Street
Kolkatta 700 001

2. The General Manager (Personnel)
UCO Bank, Personnel Department
12, Old Court House Street
Kolkatta 700 001

3. The Deputy General Manager
UCO Bank, Regional Office
No.328, Thambu Chetty Street
Chennai 600 001 ...Respondents

Petition under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. V. Dhanapalan

For Respondents: Mr. G. Masilamani, Senior Counsel
for Mr. Srinath Sridevan

:ORDER

By consent of counsel for both sides, the writ petition itself is taken up for final disposal.

2. The petitioner has come forward with this writ petition praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned transfer order issued in T.O.No.IR/36/2003 dated 29-04-2003 passed by the Deputy General Manager, UCO Bank, Regional Office, 328, Thambu Chetty Street, Chennai 600 001, the third respondent herein and the Rejection Order issued in Ref.PER /TPC/2003/1509 dated 23-10-2003 passed by the Chairman and Managing Director, Head office, Personnel Department, No.12, Old Court House Street, Kolkatta, the first respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, against the rules and regulations

of the respondents and thereby direct the respondents to retain the petitioner as the Assistant Manager (Scale-JM-1) UCO Bank, Korattur Branch, Korattur, Chennai.

3. The petitioner has stated that he was appointed as Clerk-cumAssistant Cashier on 25-06-1982 in the respondents Bank. He was promoted on 29-03-2003 to the post of Joint Management Scale I Officer along with 37 persons. It is alleged by the petitioner that some of the co-promotees were posted at Chennai or nearby areas, but he was transferred to Bhopal by Order dated 29-04-2003 by the second respondent herein, who is the controlling authority. In and by the said order, he was relieved on the same date. The petitioner was on medical leave from that date onwards. It is stated by the petitioner that seniors like him should be retained in Chennai/Southern Regions and juniors to be posted to remote places/other regions, which was not followed in this case. The petitioner has two children, first one is daughter studying 10th Standard, the second one is son studying 8th Standard and both are at Chennai. Both of them have taken Tamil as second language. The petitioner has made a representation to the second respondent to retain him in the present station at Chennai mentioning the family conditions and also brought notice that he is official representative of the UCO Bank SC/ST & OBC Employees Council, but no reply till July 2003. The petitioner has filed Writ Petition No. 21361 of 2003 and this Court directed the petitioner to submit a representation to the Chairman and Managing Director, UCO Bank, Calcutta and on such representation directed the said authority to consider the same in a sympathetic manner, if law permits enabling the petitioner to be with his wards till the academic year is closed and pass appropriate orders within a period of six weeks from 22-09-2003, on which date the writ petition was disposed of. According to the petitioner, the respondents have considered similarly placed employees Mr. S. Ramachandran, who was originally transferred to Bhopal, but on his representation that his children are studying, he was posted to Regional Office at Bangalore by Order dated 07-08-2003. The petitioner submits a representation to the first respondent namely the Chairman and Managing Director, which was rejected on 23-10-2003, which is impugned in this writ petition.

4. The respondents have stated that the petitioner was transferred on 29-04-2003, but he was relieved on 24-05-2003 taking into account of the studies of the school going children of the petitioner not to be affected. The transfer is incidence of service conditions. There is no law or procedure that senior most transferees should be retained in Southern region and junior persons must be transferred to outside regions. The officers are transferable anywhere in India as per the banking policy depending upon the deficit. There is a vacancy and need for a Management Scale I Officer at Bhopal Branch, the petitioner was found suitable, hence, the order of transfer was passed. The petitioner has challenged the transfer order in W.P. No. 21361 of 2003 wherein he has not raised any such averment of malafide or seniormost persons are exempted from transfer, but raised the same in the present writ petition which is nothing but later thought. Even in the earlier writ petition, this Court held that transfer order is valid but directed the petitioner to submit a representation to enable him to be with his wards till the academic year is closed. Indeed, even after the academic year was over, the petitioner has not joined duty to the transferred place, but chosen to file the present writ petition, which is not even maintainable in Law.

5. Mr. Dhanapalan, learned counsel appearing for the petitioner submitted that the impugned order has been passed in total violation of the Rules and Regulations and the established Procedures of Law; out of 38 persons promoted to the Manager scale, the petitioner was in 16 th place. The senior most persons shall be retained in the southern region and the juniors, who are not able to be accommodated in the Southern region may be transferred to other regions in case of necessity, which is not followed; the respondents have retained juniors, particularly serial Nos. 28 to 38 at Chennai, but transferred the petitioner to Bhopal, Madhya Pradesh, which amounts to violation of Article 1 4 and 16 of the Constitution of India. One Ramachandran, copromotee, who was transferred to Bhopal was posted at Bangalore on his request; the petitioner is an important office bearer of the UCO Bank SC/ ST & OBC Employees council to represent their grievance, while so, the respondents ought to have given posting at Chennai Head Quarters for effective discharge of his functions. The Secretaries, President of the respective trade unions are exempted from transfer, while so, the respondents ought to have treated the petitioner's association also on par with the trade unions, but failed to do so. In support of his contentions, the learned counsel for the petitioner relied on the communications of the UCO Bank SC/ST & OBC Employees Council dated 30-1 0-2000, 26-11-2001, 22-06-2002, 30-04-2003, 26-05-2003, 03-06-2003 and 20-06-2003 wherein the petitioner and others position and duties are contemplated. The learned counsel also relied on the Office Memorandum No. 36026/3/85 Establishment (SCT) dated 24-06-1985 to say SC/ ST officers are sometimes transferred to far off places and also placed at insignificant positions and taking into consideration of the same, the Government of India, Department of Personnel Administration has issued the Office Memorandum requesting the authorities to desist from any act of discrimination against the members of the SC/ST communities on the ground of their social origin.

6. The learned counsel appearing for the petitioner relied on the

following decisions in support of his case.

i) (Comptroller & Auditor General of India v. Mohan Lal Mehrotra) (1992) 1 SCC 20 wherein in Para-12 it was held thus:-

12. The High Court is not right in stating that there cannot be an administrative order directing reservation for Scheduled Castes and Scheduled Tribes as it would alter the statutory rules in force. The rules do not provide for any reservation. In fact, it is silent on the subject of reservation. The government could direct the reservation by executive orders. The administrative orders cannot be issued in contravention of the statutory rules but it could be issued to supplement the statutory rules. (See: the observations in Sant Ram Sharma v. State of Rajasthan). In fact similar circulars were issued by the Railway Board introducing reservations for Scheduled Castes and Scheduled Tribes in the Railway services both for selection and nonselection categories of posts. They were issued to implement the policy of the Central Government and they have been upheld by this Court in Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India."

In this case, the Honourable Supreme Court held that any reservation in public employment to Schedule Caste/ Schedule Tribes need not always be statutory but can be made by means of an administrative Orders also. Mr. Dhanapalan, learned counsel relied on the above judgment to show that the Office Memorandum dated 24-06-1985 mentioned supra has statutory force, which ought to have been followed, but not followed by the respondents.

ii) (Director of School Education, Madras and others Vs. O. Karuppa Thevan and another) 1994 Supp (2) Supreme Court Cases 666 wherein in para-2 it was held thus:-

"2. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We,

therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

In this case, the Honourable Supreme Court held that employees should not be transferred during mid-academic term when their children are studying.

7. Mr. Masilamani, learned Senior Counsel appearing for the respondents submitted that the transfer of an employee from one place to another is an incidence of service and it does not affect or alter his terms and conditions of service; the petitioner, on promotion, was transferred from Chennai to Bhopal. The learned Senior counsel relied on the revised transfer policy for Officers of the UCO Bank and relevant clauses are extracted hereunder:-

"15. While preparing the longest continuous stay list and identifying the officers for inter-state transfers, the transfer list will be prepared in the following order.

15.1 For the purpose of inter-state transfers, officers who have never undergone any inter-state transfers would be identified first according to their longest continuous stay in the State without considering their retention period in the region/place and thereafter rest of the officers will be identified for inter-state transfers on the basis of their longest continuous stay in the State without considering their retention period in the region/place.

26.12 Although the transfers will be to any nearby deficit State, the Bank may transfer officers to any deficit State other than the nearby deficit state with a view to removing over all imbalances i.e., surplus/deficit positions and other administrative reasons.

26.2.1 Officers (promoted to JMS-1) who are otherwise not given posting outside the State shall not be retained in the same region.

26.2.2 Scale-I Officers from surplus State will be moved to deficit State as decided by the Bank. First, the newly promoted Officers will be moved. Thereafter, the other Officers who are not new promotees shall be moved."

8. Mr. Masilamani, learned Senior counsel appearing for the respondents, relying on the above said clauses demonstrated that while preparing the list of transfer, the longest continuous stay of the officers in a particular region are considered for inter-state transfers; that one Ramachandran, who was one of the co-promotees joined Chennai on 07-05-1982, who was originally transferred to Bhopal and on his representation that his handicapped child not having any facility in the transferred place at Bhopal for pursuing the special kind of study, on humanitarian ground, he was posted at Bangalore. One J. Krishnamurthi, whose date of joining in Chennai was 28-07-2003 was transferred to Portblair, which was challenged by him by way of Writ Petition, which was dismissed by me on 30-03-2004. It is also submitted that except two lady employees, other co-promotees were transferred to other Regions taking into account of their long stay at Chennai and the petitioner was no way discriminated. The learned senior counsel further submitted that except president and secretaries of the recognised Trade Union, no officer bearer of any Association are retained in the same station. The learned Senior counsel also submitted that the Office Memorandum relied on by the learned counsel for the petitioner has nothing to do with the transfer, but it can be made applicable only in cases of harassment or discrimination against

SC/ST employees in Central Government services/Posts. It is narrated by the learned Senior counsel that transfer, in the case on hand, cannot be treated as a harassment or discrimination.

9. It is not in dispute that the petitioner is in Chennai Branch/ branches for a long period from 25-06-1982. On promotion, he was transferred to Bhopal. The petitioner has filed W.P. No. 21361 of 2003 which was disposed of by this Court with liberty to file a representation to the first respondent to seek his remedy of suspension of transfer till the academic year was over. The list of co-promotees, who were transferred to various places is also placed before this Court for consideration. It is seen from the said list that the petitioner was no way discriminated. Indeed, transfers were made following ' longest stay' at Chennai. The transfer is incidence of service. When the transfer order is passed due to administrative exigency, it is not open to the Court to interfere. The respondents have power to transfer the petitioner. The only exception to transfer is it can be shown that the order was by way of a camouflage with the real intention to punish the petitioner. The power vested with the respondents must be used honestly, bonafide and reasonably. If the power is used for extraneous considerations for achieving any alien purpose or for oblique motive, it's use shall be struck down by the Courts. In this case, I do not find any such oblique motive.

10. The below mentioned Judgments of the Honourable Supreme Court caution the judicial review in matters of transfer.

In the decision reported in (Lakshmi Narayan Mehar Vs. Union of India and others) AIR 1997 SC 1347 the Honourable Supreme Court observed that the employee was posted near home town on compassionate grounds and later transferred on ground that service of experienced officers were necessary. The said order was passed due to administrative exigency and the Honourable Supreme Court refused to interfere with the said transfer.

In the decision reported in (E.P. Rayappa Vs. State of Tamil Nadu) AIR 1974 SC 555 the Honourable Supreme Court held that the allegations of malafides are often made more easily than proved. The very seriousness of such allegation demands proof of high order of credibility.

In (M. Sankaranarayanan, I.A.S., Vs. State of Karnataka and others) AIR 1993 SC 763, the Honourable Supreme Court observed that transfer of Chief Secretary, due to difference of opinion occurring between the Chief Secretary and the Chief Minister alleged. Such act does not warrant a finding that due to displeasure of Chief Minister, transfer is effected, but not on administrative exigency, but to malign the Chief Secretary. The position in this regard was also followed by the Honourable Supreme Court in the decision AIR 1974 SC 555 cited supra.

In the decision (B. Varadha Rao Vs. State of Karnataka and others) AIR 1974 SC 555, the Honourable Supreme Court held that when order of transfer not resulting in alteration of service condition to the disadvantage of the employee, such order does not even appellable.

In (Union of India and others Vs. S.L. Abbas) AIR 1993 SC 2444 the Honourable Supreme Court held that transfer of an employee made without following guidelines cannot be interfered with by the Court unless, it is vitiated by malafides or is made in violation of the statutory provisions. While ordering transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right. It is also further held that who should be transferred and where is a matter for the proper authority to decide and unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it.

11. Mr. Dhanapalan, learned counsel appearing for the petitioner placed arguments that the Union and the Associations are to be treated on the same footing since Article 19 (1) (c) of the Constitution envisage that the citizen shall have the right to form Associations or Unions. The crux of the argument of Mr. Dhanapalan is that once certain privileges are granted to the Union (trade Union) the same shall be extended to Association. It is further argued that the impugned order is contravention of Article 19 (1) (c) of the Constitution of India and therefore void. 12. Article 19 (1) (c) of the Constitution of India guarantees the right to form association or union and has to be read with Clause 4 of this Article which permit the imposition of legal restriction on the right in so far as such restriction may be reasonably required in the interest of the sovergenity and integrity of India, public order and morality.

13. The fundamental right guaranteed under Article 19 (1) (C) of the Constitution of India has to be viewed with reference to facts of any particular case in order to find out whether any particular order makes any impact or impinges upon the exercise of such fundamental right or the acquisition of such right. In the decision of this Court reported in (The Peddanaickenpalayam Co-operative Agricultural Bank Ltd., Vs. Government of Tamil Nadu and others) AIR 1979 Madras 241 (DB), in Para No.10 it was held thus:-

"10. ..... We have already referred to the preamble, to which learned counsel also made reference. Here again such co-operative societies are formed for the promotion of thrift, self-help and mutual aid among persons of common economic needs and for the development of the community at large. Public interest thus being well served by such a co-operative movement, the appointment of a Managing Director to assist the Board and to see that the affairs of the Board are properly performed, in accordance with law and to subserve the community at large, cannot be said to be an activity which has an impact on Article 1 9 (1) (c) of the Constitution at all."

14. For example, conferring the status of recognised Union on the Union, satisfying certain prerequisites which the other Union is not in a position to satisfy does not deny the right to form association. In the decision reported in (Balmer Lawrie Workers' Union, Bombay and another V. Balmer Lawrie & Co Ltd and others) AIR 1985 SC 311, the Hon'ble Supreme Court, in Para-16, held thus:-

"16. ..... Conferring the status of recognised union on the union satisfying certain prerequisites which the other union is not in a position to satisfy does not deny the right to form association. In fact the appellant union has been registered under the Trade Unions Act and the members have formed their association without let or hindrance by anyone. Not only that the appellant union can communicate with the employer, it is not correct to say that the disinclination of the workmen to join the recognised union violates the fundamental freedom to form association. It is equally not correct

to say that recognition by an employer is implicit in the fundamental freedom to form an association. Forming an association is entirely independent and different from its recognition. Recognition of a union confers rights, duties and obligations. Non-conferring of such rights, duties and obligations on a union other than the recognised union does not put it in an inferior position nor the charge of discrimination can be entertained. The members of a non-recognised association can fully enjoy their fundamental freedom of speech and expression as also to form the association."

15. The termination of services of a railway employee on his obtaining membership of a communist party is not violative of Article 19 (1) (C) because services under Government is not a fundamental right and the fundamental right to form a association remains in tact even after loss of job. In the decision reported in (P. Balakotaiah v. Union of India) AIR 1958 Supreme Court 232, in Para 17, it was held thus:-

"(17) (IIb) It is next contended that the impugned orders are in contravention of Article 19(l)(c), and are therefore void. The argument is that action has been taken against the appellants under the rules, because they are Communists and trade unionists, and the orders terminating their services under Rule 3 amount, in substance, to a denial to them of the freedom to form associations, which is guaranteed under Article 19(l)(c). We have already observed that that is not the true scope of the charges. But apart from that, we do not see how any right of the appellants under Article 19(l)(c) has been infringed. The orders do not prevent them from continuing to be Communists or trade unionists. Their rights in that behalf remain after the impugned orders precisely what they were before. The real complaint of the appellants is that their services have been terminated; but that involves, apart from Article 311, no infringement of any of their Constitutional rights. The appellants have no doubt a fundamental right to form associations under Article 19(l)(c), but they have no fundamental right to be continued in employment by the State, and when their services are terminated by the State they cannot complain of the infringement of any of their Constitutional rights, when no question of violation of Article 311 arises. This contention of the appellants must also be rejected.

16. Fundamental rights guaranteed under Article 19 (1) (C) is no doubt very cherished rights, but the right of an individual must be subject to the greater right of the public at large.

17. The impugned order does not prevent the petitioner from

continuing to be a member or office bearer of the association. His rights in that behalf remain even after the impugned order precisely what he was before. When his services are required in other stations the transfer is inevitable, he cannot complain of infringement of his constitutional right. Forming an association is entirely different from non-conferring certain rights and privileges on par with other trade unions. Applying the ratio laid down by the Apex Court in the decision reported in (Balmer Lawrie Workers' Union, Bombay and another V. Balmer Lawrie & Co Ltd and others) AIR 1985 SC 311 non-conferring such rights and privileges does not put in the petitioner association in an inferior position nor the charge of discrimination can be entertained. Hence, the argument advanced by Mr. Dhanapalan, learned counsel for the petitioner that refusal to grant certain privileges is contravention of Article 19 (1) (C) of the Constitution is unsustainable.

For the foregoing reasons, I do not find any merit in the writ petition, hence the same is dismissed. No costs. Connected WPMP and WVMP are closed.

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Index : Yes
Internet : Yes

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